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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,383	01/23/2006	Takanori Kawai	14220707PUS1	6103

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER	
CHAWLA, JYOTI	
ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
03/19/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/565,383	KAWAI ET AL.	
	Examiner	Art Unit	
	JYOTI CHAWLA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's submission filed on 12/22/2008 has been entered as compliant. Claims 1-6 have been amended and claims 7-12 are added to the current application. Claims 1-12 are pending and examined in the current application.

Claim Objections

Objection to claim 1 for reciting the term “characterized in that” has been withdrawn based on applicant’s amendments.

Claim Rejections - 35 USC § 112(second paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "improving quality of food compared to quality of the same deep fried food prepared without said composition". The term “quality improver" in claims 1 is a relative term which renders the claim indefinite. The term “quality improver " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term quality improver may have different meaning for different individuals, e.g., depending on the end use, what may be considered as a quality improvement (i.e., achieving a specific crispness), may be considered a factor of deteriorating quality in another application. Thus, the term “quality improver” as recited in the claims renders the claims indefinite.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejection of claims 1-6 under 35 U.S.C. 102(b) as being anticipated by Takahashi et al has been withdrawn based on applicant's amendments.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over IDS reference Takahashi et al (US 2002/0001659 A1), hereinafter Takahashi in view of Krawczyk (US 6025007).

Regarding claims 1, 11 and 12, Takahashi teaches of an oil absorption retarding composition for improving the quality of the same deep fried food prepared without said composition, comprising a polysaccharide powder having an average particle size of 20 μm or less wherein the polysaccharide added includes alginic ester, alginic acid, pectin, xanthan gum, guar gum and carboxymethyl cellulose, hereinafter, CMC (Publication, page 2, paragraphs [0018]). Regarding the particle size Takahashi teaches of particle size of the powders to be equal to or less than 100 μm (Page 2, Para [0023]) and 20 μm as particle size (Page 4, Tables 5 and 6). Takahashi also teaches that as the particle size decreases the oil content and the relative oil absorption of the foods reduces (Page 4, tables 5 and 6). Krawczyk teaches of cellulose (i.e., polysaccharide) as modifier for foods. Krawczyk also teaches that colloidal size particles of cellulose, i.e., particle size. $\geq$ 0.1 to $\leq$ 10 μm (column 4, lines 20-34). Thus, polysaccharides recited by the applicant were known to be added to fried foods (Takahashi) and polysaccharide powders having particle sizes in the recited range of the applicant were known and available at the time of the invention (Takahashi and Krawczyk). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Takahashi and include polysaccharide powders in the size taught by Krawczyk at least for the purpose of achieving a quick dispersion of the fine polysaccharide powders in a batter composition.

Regarding claim 2, Takahashi teaches a quality improver for a deep-fried foods wherein the polysaccharide is a powder (Publication paragraphs [0023] and Page 4, Tables 5 and 6). Claim 2, is directed to a product but has process steps (subjecting the polysaccharide to jet pulverization or freeze pulverization). Even though product-by-process claims are limited by and defined by the process, determination of patentability

is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Regarding claim 3, Takahashi teaches an oil absorption retarding composition for deep-fried foods wherein polysaccharides included are pectin and alginic acid (Publication, pages 1- 2, paragraphs [0015] and [0018, lines 3 and 4]), as instantly claimed.

Regarding claim 4, Takahashi teaches of frying powder comprising the quality improver for deep-fried foods (Publication, page 2, paragraphs [0021] and [0024]), as instantly claimed.

Regarding claim 5, Takahashi teaches a frying food, such as doughnut or fry or tempura etc., comprising the quality improver for a deep-fried food (Publication, page 2, paragraph [0021]), as instantly claimed.

Regarding claim 6, Takahashi teaches a deep-fried food prepared by cooking using the quality improver for a deep-fried food (Publication, page 2, paragraph [0021]), as instantly claimed.

Claims 7-10, recite the limitation of size of the polysaccharide powder, which has been discussed regarding the rejection of claim 1. Takahashi in view of Krawczyk teaches polysaccharides in the size range as recited by the applicant. Thus claims 7-10 are rejected over Takahashi in view of Krawczyk for the same reason as disclosed in the rejection of claim 1.

Therefore, claims 1-12 as recited are obvious over Takahashi in view of Krawczyk.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered are based on the new amendments to claims 1-6 and new claims 7-12. Thus applicants arguments dated 12/22/08 are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Haneki et al (JP 2002-291433, English abstract and machine translation): Haneki teaches of polysaccharides as modifiers for fried foods. The polysaccharides as taught by Haneki one or more polysaccharides from group consisting of guar gum, xanthan gum and tamarind gum. Haneki further teaches that the particle size of the polysaccharide is $\geq$ 1 to $\leq$ 15 μm.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JC/
Examiner
Art Unit 1794

/JENNIFER MCNEIL/
Supervisory Patent Examiner, Art Unit 1794